

AFFIDAVIT FOR SEARCH WARRANT

LOWSF
12.3.5407

<p>United States District Court</p>	<p>DISTRICT WESTERN DISTRICT OF WASHINGTON</p>	
<p>United States of America vs. THE PIONEER CONSTRUCTION MATERIALS COMPANY, A DIVISION OF RIEDEL INTERNATIONAL, INC.</p>	<p>DOCKET NO.</p>	<p>MAGISTRATE'S CASE NO.</p>
	<p>NAME AND ADDRESS OF JUDGE¹ OR U.S. MAGISTRATE JOHN L. WEINBERG United States Magistrate 103 U.S. Courthouse Seattle, WA 98104</p>	
<p>The undersigned being duly sworn deposes and says: That there is reason to believe that</p>		
<p><input type="checkbox"/> on the person of <input type="checkbox"/> on the premises known as</p>		<p>DISTRICT WESTERN DISTRICT OF WASHINGTON</p>
<p>The Duwamish ready-mix concrete plant of the Pioneer Construction Materials Company, a division of Riedel International, Inc., a multi-acre industrial facility located at 5975 East Marginal Way South, Seattle, Washington, bordered on the east by East Marginal Way - First Avenue South, on the south by a chain link fence and the shoreline of Slip #2 (See Attachment B)</p>		
<p>The following property (or person) is concealed:</p>		
<p>Certain property, to which the affiant and other employees of the United States Environmental Protection Agency seek access for the purpose of (1) inspecting and photographing facilities, devices and materials, (2) sampling raw materials and process and waste waters; (3) seizure of documentary evidence, these items of property further described in the attached Property List,</p>		
<p>Affiant alleges the following grounds for search and seizure²</p>		
<p>Violations of the Federal Water Pollution Control Act, Title 33, United States Code, Section 1251, <u>et seq.</u>; the Rivers and Harbors Act, Title 33, United States Code, Sections 403, 407 and 411; and the Resource Conservation and Recovery Act 42 U.S.C. Section 6928, <u>et seq.</u></p>		
<p><input type="checkbox"/> See attached affidavit which is incorporated as part of this affidavit for search warrant</p>		
<p>Affiant states the following facts establishing the foregoing grounds for issuance of a Search Warrant</p>		
<p>See attached affidavit of Gerd Hattwig.</p>		
<p>SIGNATURE OF AFFIANT GERD HATTWIG</p>		<p>OFFICIAL TITLE, IF ANY Special Agent & Special Deputy, U.S. Marshal</p>
<p>Sworn to before me, and subscribed in my presence:</p>		
<p>DATE September 2, 1986</p>	<p>JUDGE¹ OR US MAGISTRATE JOHN L. WEINBERG</p>	

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¹United States Judge or Judge of a State Court of Record.

²If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor.

ATTACHMENT B

(an inlet which appears on navigational charts of the Duwamish River), on the west by the Duwamish River shoreline, and on the north by a large building with the address 5931 E. Marginal Way South, which building is occupied by another company, the Norwest Gypsum Company. The Pioneer facility is clearly identified as such by the name Pioneer Construction Materials Company in large red letters on a two-story tan office building facing East Marginal Way South, with the name Glacier Sand and Gravel Co. in smaller green letters also appearing below the name of Pioneer. The building is further marked by the street address 5975 and the Pioneer Company's logo, a large red "P" on a green circle depicting a globe. A large metal building is also located on the premises, forming part of the eastern and southern border of the plant.

The Pioneer Construction Materials Co. plant contains a second two-story office-type building at the south west corner of the facility, a number of large tower-like structures used in concrete production, a water tower, and some large open waste water storage lagoons or trenches adjacent to a bulkhead on the south side. There are a number of conveyor belts and piping connecting various structures.

Property List

1. For sampling and inspection purposes: all raw material and waste and waste water storage, treatment, and disposal areas, including those containing cement and concrete raw materials, concrete production final products, concrete production byproducts and wastes (including cooling water), concrete production equipment cleaning solutions (unused and waste); all concrete production and related waste disposal equipment and devices, including tanks, vats, lagoons, manholes, pipes, drains, trenches, conduits, valves and waste material land application areas and equipment, and affiliated structures (buildings) housing the same; all general equipment used in concrete production, including returning (mostly) empty Pioneer and Glacier Sand and Gravel trucks present on the facility during the time of execution of this warrant.

2. For sampling and inspection purposes: soil, water, and waste liquids, and other natural or man-made materials in the vicinity of the areas and devices referred to in paragraph one above.

3. For photographing purposes: all structures, buildings, offices, piping, equipment, and other areas of the Pioneer Duwamish plant.

Books, records, and files (of all sorts, including computer disks, other storage media, or printouts) indicating the following, described in the succeeding paragraphs of this list:

4. Documents indicating the name, addresses, and telephone numbers of all company employees and all documents which contain job descriptions or other material defining the nature and scope of each employee's responsibilities, and records which show time and attendance of said employees, including time cards, or other such records reflecting employment history, such records to include those of former employees no longer currently employed by the company.

5. All records for cleaning operations involved in concrete production and sale.

6. All documents indicating the chemical constituents and physical properties of concrete production raw materials, cleaners, and related waste, including but not limited to animal and plant studies, laboratory analyses, formulas, recipe books, production labels, chemical indexes and manuals, manufacturers' descriptive literature, safety literature and employee precautions.

7. Any documents, correspondence, notes, or memoranda concerning communications by or between (1) officials and employees of Riedel International, Inc., and its division, Pioneer Construction Materials (and Glacier Sand and Gravel) or (2) these company officials and employees and federal, state and local environmental, health, and industrial waste water treatment agencies which in any way relate to concrete production wastes, concrete production cleaning materials and the disposal of these wastes.

8. Documents and files demonstrating knowledge on the part of corporate officers and employees of the nature of the materials handled at Pioneer Construction Materials Co. and/or of laws regulating their disposal and use.

9. Documents, correspondence, notes, and memoranda concerning citizen complaints to Pioneer Construction Materials Co., about waste discharge.

10. Any documents relating to contracts with any transporter, treater, or disposer for the handling of concrete production waste materials.

11. Maps, sketches or other schematics of plumbing, trenches, production lines, discharge systems and pipes or cooling water systems, and records of modifications, construction or renovation of plumbing or piping including contracts, bills, payments and letters to or from contractors.

12. Records, flow meter charts, log books, and discharge monitoring notes, laboratory analyses and notebooks, and other documents concerning quantities, rates, and constituents of waste water discharge (both directly to the Duwamish River and to the sanitary sewer).

13. Records, logs, tallies or other documents reflecting accumulation rates for wastes.

14. Records, logs, tally sheets or other documents concerning concrete production quantities.

15. Facility or driver concrete truck trip log sheets and other records of use and cleaning of cement and concrete trucks

owned and/or operated by Pioneer Construction Materials Co. and Glacier Sand and Gravel Co., operated out of the Pioneer Duwamish facility.

16. Night watchman logs, records, or reports containing reference to waste water valve operation, waste discharge, equipment monitoring, and night crew employee attendance.

17. Documents reflecting the purchases, uses, and disposal of any acids at Pioneer Construction Materials Co.

18. Documents explaining operation of any computer system containing any of the above information.

A F F I D A V I T

GERD R. HATTWIG, being first duly sworn on oath, states:

1. I am a Special Agent with the United States Environmental Protection Agency (hereafter "EPA") Office of Criminal Investigations located in Seattle, Washington. In my current position, I am also a Special Deputy United States Marshal and am authorized to obtain and execute search warrants.

2. I am responsible for, among other things, conducting investigations of criminal violations of several environmental statutes, including the Federal Water Pollution Control Act (33 U.S.C. §§ 1251, et seq.), commonly referred to as the Clean Water Act (CWA), the Rivers and Harbors Act (33 U.S.C. §§ 403, 407, and 411), and the Resource Conservation and Recovery Act (hereafter, "RCRA"), 42 U.S.C. § 6901, et seq.

The CWA bans the discharge of any pollutant into a navigable water via a "point source" except in compliance with a previously obtained permit under the National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. §§ 1311(a), 1319(c)(1), and 1342. "Pollutant" is broadly defined to include, inter alia, "sewage, garbage, chemical wastes, biological materials . . . and industrial . . . and agricultural waste discharged into water." 33 U.S.C. § 1362(6). A "point source" is also broadly defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, . . . from which pollutants are or may be

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1 discharged." 33 U.S.C. § 1362(14). NPDES permits are available
2 from the State of Washington Department of Ecology (DOE) and from
3 EPA, upon application and acceptance of conditions usually
4 required in such permits (such as effluent limits). Section 402
5 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit system
6 as a basic mechanism for enforcing the effluent and water quality
7 standards applicable to direct discharges into navigable waters.
8 The CWA provides for criminal penalties for willfully or
9 negligently: (a) discharging pollutants into navigable waters
10 without an NPDES permit for the particular discharge, and
11 (b) violating conditions contained in any NPDES permit. 33 U.S.C.
12 § 1319(c)(1).

13 The Rivers and Harbors Act makes criminal the discharge
14 of "refuse" into navigable waters without a permit. 33 U.S.C.
15 §§ 403, 407, and 411. Courts interpreting the term "refuse" have
16 broadly defined it to include virtually all wastes.

17 RCRA was enacted in 1976 as a Congressional response to the
18 growing number of hazardous waste sites resulting from unregulated
19 waste disposal practices. 5 U.S. Code Cong. & Admin. News 6441
20 (1976). The objectives of this statute include, inter alia,
21 protection of human health and the environment through stringent
22 regulation of the treatment, storage, transportation, and disposal
23 of hazardous waste. 42 U.S.C. § 6902. The Act accomplishes its
24 objectives by creating a "cradle-to-grave" regulatory scheme to
25 govern and track hazardous wastes from the point of generation
26 until their final disposal.

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1 First, the statute requires the EPA to identify and list
2 solid wastes which meet the statutory definition of a hazardous
3 waste.^{1/} These identified and listed hazardous wastes are then
4 further subject to regulations established by the EPA regarding
5 the handling of such wastes. 42 U.S.C. § 6921. The majority of
6 these regulations, including those listing and identifying
7 hazardous wastes, were promulgated on May 19, 1980, and became
8 effective on November 19, 1980. See generally 40 C.F.R. Part 261.

9 Once a waste is listed as hazardous, it is subject to
10 regulation unless the generating facility petitions for and
11 obtains an exclusion from regulation by demonstrating that the

12 _____
13 1/ The statute defines "hazardous waste" as:

14 [A] solid waste, or combination of solid
15 wastes, which because of its quantity,
16 concentration, or physical, chemical or
infectious characteristics may --

17 (A) cause, or significantly contribute
18 to an increase in mortality or an
increase in serious irreversible, or
incapacitating reversible illness; or

19 (B) pose a substantial present or
20 potential hazard to human health or the
21 environment when improperly treated,
stored, transported, or disposed of, or
otherwise managed.

22 The term "solid waste" is defined in § 6903(27) as:

23 [A]ny garbage, refuse, sludge from a waste
24 treatment plant . . . and other discarded
25 material including solid, liquid, semisolid or
26 contained gaseous material resulting from
industrial, commercial, mining and
agricultural activities

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1 waste does not meet any of the hazardous criteria under which it
2 was listed. See 40 C.F.R. § 261.3(c) and 260.22. Individual
3 waste generators must identify their own wastes as hazardous, see
4 42 U.S.C. § 6922 and 40 C.F.R. § 262.11, and must then arrange
5 for the proper transportation, treatment, storage, and disposal
6 of the waste in accordance with the statute and applicable
7 regulations. 42 U.S.C. § 6922 and 40 C.F.R. Part 262.

8 Specifically, arrangement must be made to treat, store, or
9 dispose of the wastes at a facility permitted, pursuant to RCRA,
10 to handle such wastes.

11 The treatment, storage, or disposal of hazardous wastes may
12 take place only at a facility properly issued a RCRA permit, 42
13 U.S.C. §§ 6925 and 6926, whether the facility is owned and
14 operated by the waste generator or an unrelated party. These
15 permits impose regulatory conditions specifically tailored to the
16 type of activity at a particular facility and the facility may
17 only handle those wastes and perform those activities covered by
18 its permit. See 40 C.F.R. Part 264.

19 Recognizing that the process of issuing RCRA permits would
20 take a significant period of time, Congress created a mechanism
21 whereby existing hazardous waste treatment, storage, and disposal
22 facilities could remain in operation from the effective date of
23 the regulations until the issuance of a permit. Thus, a facility
24 was considered to have "interim status", and treated as having a
25 permit, if it met the following conditions: (1) it was in
26 existence on November 19, 1980; (2) the appropriate notice of

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1 hazardous waste activity was given to EPA; and (3) an application
2 for a permit was made by November 19, 1980,^{2/} with modification
3 later as appropriate based upon changed circumstances.^{3/}
4 42 U.S.C. § 6925(e). However, the permit status is strictly
5 limited to only those activities described in the permit
6 application, or subsequent modified application. 40 C.F.R.
7 § 270.71. Thus, where a permit application maintains that the
8 facility stores hazardous waste only, disposal is not permitted.
9 Nor is the storage or disposal of hazardous waste in a manner
10 other than that specified in the application allowed. 40 C.F.R.
11 § 270.71. A facility may only treat, store, or dispose of those
12 wastes specifically listed and described in the permit
13 application. Interim status facilities are also subject to
14 regulations similar to those which will later be applied to the
15 facility through a final RCRA permit. See 40 C.F.R. Part 265.

16 Section 6926 of RCRA provides a mechanism whereby a State
17 may seek authorization from the Administrator of EPA to
18 administer a hazardous waste program within the State. The
19

20 2/ November 19, 1980, is the effective date for EPA's
21 hazardous waste regulatory program.

22 3/ A land disposal facility qualifying for interim status
23 prior to November 9, 1984, would maintain this status after
24 November 9, 1985, only if the owner or operator of the facility
25 applied for final permit determination prior to that date and
26 certified that the facility was in compliance with all
applicable groundwater monitoring and financial responsibility
requirements. 42 U.S.C. § 6925(e). If these requirements were
not met, the facility would be considered to be operating
without a permit.

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1 Administrator of EPA will authorize such a program if the State
2 demonstrates, among other things, that its proposed program is
3 equivalent to the federal program. Once a State receives
4 authorization pursuant to section 6926, then the State
5 regulations apply, in lieu of the Federal regulations, for
6 purposes of determining whether the material is in fact a
7 hazardous waste and therefore is subject to regulation. The
8 State of Washington received authorization from EPA to carry out
9 a hazardous waste program on August 2, 1983.

10 The criminal enforcement provisions of RCRA provide, inter
11 alia, at 42 U.S.C. § 6928(d)(1) (as amended by the Hazardous and
12 Solid Waste Amendments of 1984 - P.L. 98-616, 98 Stat. 3661) that:

13 any person who --

14 (1) knowingly transports or causes to be
15 transported any hazardous waste
16 identified or listed under this
17 subchapter to a facility which does not
have a permit under section 6925 of this
title (or section 6926) of this title in
case of a State program)

18 (2) knowingly treats, stores, or
19 disposes of any hazardous waste . . .
without having obtained a permit . . .

20 shall be guilty of an offense.

21 3. Since May 1986, I have been conducting an investigation
22 of unpermitted discharges of wastes into the environment, both
23 land and water, at and near Slip #2 of the Duwamish River,
24 Seattle, Washington, from a ready mix concrete plant operated by
25 Pioneer Construction Materials Company, identified in the
26 telephone directory and Dun and Bradstreet reports as a division

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1 of Riedel International, Inc. This plant is located at 5975 East
2 Marginal Way South in Seattle, Washington. From my personal
3 observations I know the facility consists of a number of gray
4 tall tower-like structures commonly associated with cement
5 plants, a water tank tower, a truck wash area (consisting of
6 concrete and earth), one 2-story office building next to the
7 truck wash area and one 2-story office building facing East
8 Marginal Way. This plant is also bordered on the west side by
9 the waters of the Duwamish and bordered on the south side by the
10 waters of the Duwamish in an inlet referred to on navigational
11 charts as Slip #2.

12 The facility is labeled both Pioneer Construction
13 Materials Company and Glacier Sand and Gravel Co. The telephone
14 directory listing for Glacier Sand and Gravel says to call
15 Pioneer. According to the receptionist at the Pioneer number,
16 Pioneer "bought out" Glacier.

17 4. I have examined the files of the EPA in Seattle
18 regarding the Pioneer Construction Materials Company, Riedel
19 International, Inc., and Glacier Sand and Gravel Company, and
20 have consulted with the Washington State Department of Ecology
21 ("DOE") office for the Seattle area. According to the files of
22 both agencies, there are no records of any NPDES permit or permit
23 application for this facility on file. Nor are there any RCRA
24 permits on file for the disposal of hazardous wastes at the
25 Pioneer facility on Slip #2.

26

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1 5. On May 1, 1986, Richard Koch, an Engineer with the DOE
2 assigned to the DOE Northwest office, conducted an inspection at
3 the Pioneer Duwamish plant. Koch personally observed (and
4 photographed) the facilities. He learned that the facility
5 premixes concrete from raw materials for shipment to construction
6 sites. Wastes solids from mostly empty trucks returning from
7 deliveries are placed in metal forms to solidify into "ecology
8 blocks" (meaning of non-structural strength). The trucks are
9 washed a truck wash area, with waste solids partially collected
10 in a trench area. According to Koch's observations, the wash pad
11 area allows waste water containing concrete wastes to escape from
12 the facility, through various channels in the adjoining
13 structures. Koch personally observed contaminated waste waters
14 leaving the plant via surface runoff headed for the Duwamish at
15 the time of his visit. Koch met with Plant Manager Ron Summers
16 on May 1 and discussed with Summers the need for an NPDES permit
17 for any discharges into the Duwamish. During conversations with
18 Summers, Koch was told that the plant does not routinely
19 discharge into the Duwamish and therefore does not need an NPDES
20 permit. On May 2, 1986, Koch wrote to Summers and again informed
21 him of the need for an NPDES permit for any discharges into the
22 Duwamish. Along with the letter of May 2, 1986, Mr. Koch mailed
23 an NPDES permit application and instructions to Summers.

24 6. On May 12, 1986, Mr. Koch had a telephone conversation
25 with Ron Summers, during which Summers stated he did not intend
26

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1 to apply for an NPDES permit because there would be no further
2 discharges from Pioneer into the Duwamish. Summers explained
3 that temporary measures had been taken to eliminate any
4 discharges into the Duwamish and, as part of new construction,
5 the changes would be permanently incorporated for a long term
6 solution.

7 7. Subsequent to May 12, 1986, numerous recreational users
8 of the Duwamish (members of a boating class) and several EPA
9 Special Agents have personally made observations, taken
10 photographs and/or made video recordings of numerous unpermitted
11 discharges by the Pioneer plant into the Duwamish. The latest
12 such discharge was observed by your affiant on August 27, 1986.
13 The discharges appear to be from a variety of locations at the
14 facility, along the property line that adjoins Slip #2. For
15 example, it appears that a pipe or tunnel is buried in a concrete
16 wall that stands along the river inlet, with a discharge point
17 right above an earthen embankment. The pipe has a loose fitting
18 cover plate, which appears to be more for concealment purposes
19 than for blockage, because on numerous occasions your affiant has
20 seen a steady stream of concrete waste waters splashing off the
21 plate and running down the concrete wall to the earthen
22 embankment, then into the Duwamish. On each of these occasions,
23 an obvious, distinct cloud in the river water occurs from the
24 concrete chemicals. The wall and the earthen embankment are
25 stained grey from the obviously consistent discharges.
26

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1 These discharges occur in the late afternoon and early
2 evening, during the hours when trucks return to the facility from
3 the day's deliveries. The trucks I have observed regularly
4 entering and leaving the facility are marked either Pioneer or
5 Glacier Sand and Gravel Co. The truck wash area, as previously
6 discussed, drains into trenches and concrete holding ponds which
7 must either overflow or be purposely drained via pipes onto the
8 embankment adjoining the Duwamish.

9 8. At various times samples of the Duwamish river waters
10 have been taken from the location where discharges from Pioneer
11 enter the waters of the Duwamish. For example, samples taken on
12 June 13, 1986, and analyzed by the EPA Lab in Manchester,
13 Washington, yielded the following results: all water samples
14 taken that day were a hazardous waste as defined in 40 C.F.R.
15 § 261.22 (characteristic of corrosivity) by being aqueous and
16 having a pH greater than or equal to 12.5, as determined by a pH
17 meter using either an EPA test method or an equivalent test
18 method. This extreme alkalinity is a common byproduct of
19 concrete chemical constituents, which is the reason that effluent
20 guidelines have been promulgated by EPA for concrete plants. An
21 alkalinity this high is sufficient to cause skin burns and
22 certainly to kill various forms of aquatic life. EPA studies
23 show plants complying with the law commonly recycle wash waters
24 into new batches or use acids to neutralize alkalinity of waste
25 waters.
26

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"Helping Build the West"

JAMES A. REPMAN
PRESIDENT



**PIONEER CONSTRUCTION
MATERIALS CO.**

Division of Riedel International, Inc.

OFFICE AT:

5975 E. Marginal Way So.
Seattle, WA 98134

Mailing Address:

P.O. Box 1730
Seattle, WA 98111

Phone (206) 764-3000

ORDER DESK NUMBERS

• BUILDING MATERIALS WAREHOUSE

SEATTLE
PORTLAND

(206) 764-3050
(503) 227-6090

• READY MIX CONCRETE DISPATCH

SEATTLE
TACOMA
VANCOUVER
PORTLAND

(206) 764-3030
(206) 272-8314
(206) 892-0210
(503) 243-5535

• SAND & GRAVEL, CRUSHED ROCK, FILL MATERIAL

SEATTLE
TACOMA
VANCOUVER
PORTLAND

(206) 764-3030
(206) 272-8314
(206) 892-0210
(503) 243-5535

"HELPING BUILD THE WEST"

1 9. Since records of EPA and DOE show no permit
2 authorization for disposal of these highly corrosive wastes in
3 the manner done, i.e., by discharging them into the soil and
4 water near or on the shoreline of the Duwamish (and none,
5 obviously, would ever be granted), I have reason to believe that
6 illegal disposals of hazardous wastes have occurred, in violation
7 of RCRA, in addition to the obvious violations of the Clean Water
8 Act and the River and Harbors Act, when portions of these
9 materials were allowed to enter the ground.

10 10. Based on my experience with the IRS and EPA, and my
11 familiarity with industrial facilities gained through discussions
12 with other employees of the EPA and DOE, it is likely that
13 Pioneer (including Glacier), and its employees maintain business
14 records for the purpose of billing and preparing business tax
15 returns. Usually, such records are kept in payment records,
16 general ledgers, invoices and billing statements, and related
17 computer files. These records will show the frequency of use of
18 the trucks transporting concrete. In addition, the company's
19 records should indicate what raw materials were purchased for use.

20 In my experience, facilities that use and handle potentially
21 hazardous chemical materials of the sort used by Pioneer
22 generally have documents containing safety information describing
23 the nature and hazards of the chemicals they use, and handling
24 precautions for employee safety. Washington State law now
25 requires such information to be maintained and provided to
26 employees.

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Lastly, the company must maintain employee records for tax and other purposes.

GERD R. HATTWIG
Special Agent
United States Environmental
Protection Agency

SWORN TO before me this _____ day of _____, 1986.

UNITED STATES MAGISTRATE

UNITED STATES ATTORNEY

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AFFIDAVIT OF HATTWIG - 12
(8496C)